

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1719

Introduced by Committee on Labor and Employment (Koretz (Chair), Mullin (Vice Chair), Chu, Hancock, Laird, and Negrete McLeod)

February 27, 2003

An act to amend Sections 6309 and 6315 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1719, as amended, Committee on Labor and Employment. Safety in employment.

Under existing law, the Division of Occupational Safety and Health investigates complaints that a workplace is not safe, and it may issue orders necessary to ensure employee safety. It notifies a complainant of any action taken.

This bill would require the division to notify the complainant within 14 calendar days of taking action. It would also require the division to annually compile and release on its ~~Website~~ *Web site* information as to complaints received and actions taken.

Under existing law, the Bureau of Investigation within the division is responsible for directing accident violations where there is a serious injury to 5 or more employees, death, or a request for prosecution by the division. It also refers appropriate cases to prosecuting authorities.

This bill would require the division to provide helpful information to the bureau. It would also require the bureau to notify the prosecuting authorities within 14 calendar days of a determination that there is

legally insufficient evidence of a violation of law *if the prosecuting authorities request notice.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6309 of the Labor Code is amended to
2 read:
3 6309. If the division learns or has reason to believe that an
4 employment or place of employment is not safe or is injurious to
5 the welfare of an employee, it may, on its own motion, or upon
6 complaint, summarily investigate the same with or without notice
7 or hearings. However, if the division receives a complaint from an
8 employee, an employee's representative, including, but not
9 limited to, an attorney, health or safety professional, union
10 representative, or government agency representative, or an
11 employer of an employee directly involved in an unsafe place of
12 employment, that his or her employment or place of employment
13 is not safe, it shall, with or without notice or hearing, summarily
14 investigate the complaint as soon as possible, but not later than
15 three working days after receipt of a complaint charging a serious
16 violation, and not later than 14 calendar days after receipt of a
17 complaint charging a nonserious violation. The division shall
18 attempt to determine the period of time in the future that the
19 complainant believes the unsafe condition may continue to exist,
20 and shall allocate inspection resources so as to respond first to
21 those situations in which time is of the essence. For purposes of this
22 section, a complaint is deemed to allege a serious violation if the
23 division determines that the complaint charges that there is a
24 substantial probability that death or serious physical harm could
25 result from a condition which exists, or from one or more
26 practices, means, methods, operations, or processes which have
27 been adopted or are in use in a place of employment. When a
28 complaint charging a serious violation is received from a state or
29 local prosecutor, or a local law enforcement agency, the division
30 shall summarily investigate the employment or place of
31 employment within 24 hours of receipt of the complaint. All other
32 complaints are deemed to allege nonserious violations. The
33 division may enter and serve any necessary order relative thereto.



1 The division is not required to respond to a complaint within this
2 period where, from the facts stated in the complaint, it determines
3 that the complaint is intended to willfully harass an employer or
4 is without any reasonable basis.

5 The division shall keep complete and accurate records of all
6 complaints, whether verbal or written, and shall inform the
7 complainant, whenever his or her identity is known, of any action
8 taken by the division in regard to the subject matter of the
9 complaint, and the reasons for the action, within 14 calendar days
10 of taking any action. The records of the division shall include the
11 dates on which any action was taken on the complaint, or the
12 reasons for not taking any action on the complaint. The division
13 shall, pursuant to authorized regulations, conduct an informal
14 review of any refusal by a representative of the division to issue
15 a citation with respect to an alleged violation. The division shall
16 furnish the employee or the representative of employees
17 requesting the review a written statement of the reasons for the
18 division's final disposition of the case.

19 The name of a person who submits to the division a complaint
20 regarding the unsafe condition of an employment or place of
21 employment shall be kept confidential by the division, unless that
22 person requests otherwise.

23 The division shall annually compile and release on its ~~Website~~
24 *Web site* data pertaining to complaints received and citations
25 issued.

26 The requirements of this section do not relieve the division of
27 its requirement to inspect and assure that all places of employment
28 are safe and healthful for employees. The division shall maintain
29 the capability to receive and act upon complaints at all times.

30 SEC. 2. Section 6315 of the Labor Code is amended to read:

31 6315. (a) There is within the division a Bureau of
32 Investigations. The bureau is responsible for directing accident
33 investigations involving violations of standards, orders, special
34 orders, or Section 25910 of the Health and Safety Code, in which
35 there is a serious injury to five or more employees, death, or
36 request for prosecution by a division representative. The bureau
37 shall review inspection reports involving a serious violation where
38 there have been serious injuries to one to four employees or a
39 serious exposure, and may investigate those cases in which the
40 bureau finds criminal violations may have occurred. The bureau

1 is responsible for preparing cases for the purpose of prosecution,
2 including evidence and findings.

3 (b) The division shall provide the bureau with all of the
4 following:

5 (1) All initial accident reports.

6 (2) The division's inspection report for any inspection
7 involving a serious violation where there is a fatality, and the
8 reports necessary for the bureau's review required pursuant to
9 subdivision (a).

10 (3) Any other documents in the possession of the division
11 requested by the bureau for its review or investigation of any case
12 or which the division determines will be helpful to the bureau in
13 its investigation of the case.

14 (c) The supervisor of the bureau is the administrative chief of
15 the bureau, and shall be an attorney.

16 (d) The bureau shall be staffed by as many attorneys and
17 investigators as are necessary to carry out the purposes of this
18 chapter. To the extent possible, the attorneys and investigators
19 shall be experienced in criminal law.

20 (e) The supervisor of the bureau and bureau representatives
21 designated by the supervisor have a right of access to all places of
22 employment necessary to the investigation, may collect any
23 evidence or samples they deem necessary to an investigation, and
24 have all of the powers enumerated in Section 6314.

25 (f) The supervisor of the bureau and bureau representatives
26 designated by the supervisor may serve all processes and notices
27 throughout the state.

28 (g) In any case where the bureau is required to conduct an
29 investigation, and in which there is a serious injury or death, the
30 results of the investigation shall be referred in a timely manner by
31 the bureau to the appropriate prosecuting authority having
32 jurisdiction for appropriate action, unless the bureau determines
33 that there is legally insufficient evidence of a violation of the law.
34 If the bureau determines that there is legally insufficient evidence
35 of a violation of the law, the bureau shall notify the appropriate
36 prosecuting authority ~~having jurisdiction for appropriate action~~
37 ~~within 14 calendar days of making the determination. A statement~~
38 ~~of determination rationale shall accompany the notification.~~, *if the*
39 *prosecuting authority requests notice.*

1 (h) The bureau may communicate with the appropriate
2 prosecuting authority at any time the bureau deems appropriate.

3 (i) Upon the request of a county district attorney, the
4 department may develop a protocol for the referral of cases that
5 may involve criminal conduct to the appropriate prosecuting
6 authority in lieu of or in cooperation with an investigation by the
7 bureau. The protocol shall provide for the voluntary acceptance of
8 referrals after a review of the case by the prosecuting authority. In
9 cases accepted for investigation by the prosecuting authority, the
10 protocol shall provide for cooperation between the prosecuting
11 authority, the division, and the bureau. Where a referral is declined
12 by the prosecuting authority, the bureau shall comply with
13 subdivisions (a) to (h), inclusive.

